

Reaction to: “Beyond Bias: Re-imagining the Terms of Ethical AI in Criminal Law”

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Barabas’s article sets forth three propositions: (1) that attempts to render AI-branded tools more accurate by addressing narrow notions of “bias” miss the deeper methodological and epistemological issues regarding the fairness of these tools, (2) that the key questions to address these issues are whether predictive tools reflect and reinforce punitive practices that drive disparate outcomes and how data regimes interact with the penal ideology to naturalize these practices, and (3) that an abolitionist understanding of the role and function of the carceral state provides us with the First Principles Framework we need in order to fundamentally reformulate the questions we ask, the way we characterize existing data, and how we identify and fill gaps in existing data regimes of the carceral state.

I am willing to grant the first two propositions that attempts to render AI-branded tools more accurate by addressing narrow notions of “bias” miss the deeper methodological and epistemological issues regarding the fairness of these tools, and that the key questions to address these issues are whether predictive tools reflect and reinforce punitive practices that drive disparate outcomes and how data regimes interact with the penal ideology to naturalize these practices. However, upon the information presented, I cannot credit Barabas’s final proposition that an abolitionist understanding of the role and function of the carceral state provides us with a first-principles framework to address these issues and reform the existing data regimes of the carceral state.

A fundamental flaw in Barabas’s analysis is her reliance on predominantly theoretical reasoning and failure to address the practical considerations of reforming existing data regimes in accordance with an abolitionist ideological framework. Barabas fails to incorporate practical considerations into her predominantly theoretical analysis of an abolitionist approach to reform, thus creating a potentially impracticable first-principles framework. That is, by relying predominantly on theoretical reasoning and failing to incorporate practical considerations into her analysis, Barabas creates a framework that is grounded in abstract, speculative notions rather than sensible and attainable considerations. By failing to address the practical considerations of an abolitionist approach to reform, Barabas leaves us to question whether her proposed first-principles framework could ever actually be carried out in practice. Thus, by predominantly grounding her proposition in theory and failing to incorporate practical considerations into her analysis, Barabas fails to persuade us that an abolitionist approach to reform existing data regimes is anything more than mere idealism that could never be carried out in practice.

An equally troubling flaw in Barabas’s analysis is her failure to consider the counterarguments and logistical issues inherent in an abolitionist approach to reform

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existing data regimes. First, Barabas fails to attribute proper weight to the obvious conflict between the *quantifiable* nature of existing data regimes and the essential use of *qualitative* data in reforming existing data regimes via an abolitionist approach. For instance, one could argue that an abolitionist approach to reform existing data regimes would be impractical and unreliable because it would require the collection of qualitative data, which is inherently subjective and difficult to measure. By failing to consider and refute arguments like this, Barabas leaves us to question whether an abolitionist approach to reform, although theoretically sound, is *practically* sound.

Second, Barabas fails to consider the challenges of maintaining the accuracy and reliability of qualitative data collection and analysis. For example, the collection and analysis of qualitative data, as opposed to quantitative data, poses the following issues and challenges: (1) limited sample sizes may result in gross generalizations, (2) a sample may be collected in such a way that some people have a lower probability of selection for sampling than others, (3) a person may change their behavior if they know they are being observed, and (4) researchers' beliefs or expectations may influence their interpretation of what they are observing. By failing to consider these logistical issues, Barabas leaves us to question whether an abolitionist approach to reform would result in similarly unfair data regimes based on inaccurate and unreliable data.

Although Barabas's argument for an abolitionist approach to reform existing data regimes sounds good in theory, her reliance on predominantly theoretical reasoning and failure to address obvious logistical issues and counterarguments, leaves us unconvinced that Barabas's proposition should be taken as anything more than mere idealism that could never be carried out in practice.